

CITY OF SAN JOSÉ, CALIFORNIA Department of Planning, Building and Code Enforcement 801 North First Street, Room 400 San José, California 95110-1795 STAFF REPORT	Hearing Date/Agenda Number P.C. 08-14-02 Item. 3.h.	
	File Number CP 01-037	
	Application Type Conditional Use Permit	
	Council District 7	
	Planning Area Central	
	Assessor's Parcel Number(s) 477-13-078	

PROJECT DESCRIPTION		Completed by: Jeff Roche
Location: Northwesterly corner of McLaughlin and Phelan Avenues (1775 McLaughlin Avenue)		
Gross Acreage: 1.66	Net Acreage: 1.66	Net Density: N/A
Existing Zoning: R-1-8 Residence	Existing Use: Church and associated facilities	
Proposed Zoning: No change	Proposed Use: Addition of a pastor's residence to an existing church facility	

GENERAL PLAN		Completed by: JR
Land Use/Transportation Diagram Designation Medium Low Density Residential (8DU/AC)		Project Conformance: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING		Completed by: JR
North: Commercial	CP Pedestrian Commercial	
East: Detached Residential, School	R-1-5 Residence	
South: Detached Residential	R-1-8 (PD) Planned Development	
West: Attached Residential	A (PD) Planned Development	

ENVIRONMENTAL STATUS		Completed by: JR
<input type="checkbox"/> Environmental Impact Report found complete <input type="checkbox"/> Negative Declaration circulated on <input type="checkbox"/> Negative Declaration adopted on		<input checked="" type="checkbox"/> Exempt <input type="checkbox"/> Environmental Review Incomplete

FILE HISTORY		Completed by: JR
Annexation Title: McKinley No. 1		Date: 8/21/1958

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION		
<input checked="" type="checkbox"/> Approval <input type="checkbox"/> Approval with Conditions <input type="checkbox"/> Denial	Date: _____ <input type="checkbox"/> _____	Approved by: _____ <input checked="" type="checkbox"/> Action <input type="checkbox"/> Recommendation

OWNER/APPLICANT/DEVELOPER	
Robert Watson Faith Tabernacle Pentecostal Church of God 1775 McLaughlin Avenue San José, CA 95122	

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: Jeff Roche

Department of Public Works
See attached memorandum

Other Departments and Agencies
See attached memoranda from Fire Department

GENERAL CORRESPONDENCE

None received

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

The applicant, Faith Tabernacle Pentecostal Church of God, is requesting a Conditional Use Permit to allow the addition of a pastor's residence to an existing church facility located at the northwesterly corner of McLaughlin and Phelan Avenues (1775 McLaughlin Avenue).

The subject site was annexed into the City of San Jose, on August 21, 1958, and a Part 3 Exception Permit was approved by the Director of Planning on May 12, 1972 (File No. E 72-04-025) to allow the church to be established on the subject site. In addition to paved surface parking areas, on-site lawn areas are currently used to deal with peak parking demand times. The current Zoning Ordinance requires a Conditional Use Permit (CUP) for expansion of a church related use located in the R-1-8 Residence Zoning District

Surrounding uses include a school to the east, detached residential to the south, attached residential to the west, and commercial uses to the north.

ENVIRONMENTAL REVIEW

The Director of Planning has determined that this project is exempt from environmental review under the provisions of the California Environmental Quality Act pursuant to Section 15303 (a) which pertains to the new construction or conversion of small structures.

GENERAL PLAN CONFORMANCE

The proposed use is consistent with the subject site's General Plan Land Use/Transportation Diagram designation of Medium Low Density Residential (8DU/AC), in that it is a developed parcel of less than two acres..

ANALYSIS

The analysis for this project is limited solely to the construction of a residence at the existing church facility.

The main issues analyzed for the project are: 1) Conformance to the Zoning Code and 2) Site Design.

Conformance to the Zoning Code

The project site has an R-1-8 Residence Zoning District designation. That designation requires a 25-foot front, 20-foot rear, and 5-foot side (interior)/ 12 ½ foot side (corner) setback, respectively. The project is proposing a 20-foot side (interior) and 25-foot (front) setback. Given that the residence is currently planned as part of a larger project area (ie, the church campus), the building exceeds the Code requirements for the remaining side (corner) and rear setbacks. The Zoning Code also has a maximum height limit of 35 feet. As shown on the proposed plans for the pastor's residence, the project conforms to both the setback and heights limits of the Code. The Code requires that churches provide a minimum of one parking space per four seats, resulting in a total requirement of 90 spaces for the existing church. No expansion of the church building or seating capacity is proposed as part of this Permit. As shown on the project plans, with the addition of the pastor's residence, the site will slightly exceed Code requirements for parking. For these reasons, staff has concluded that the proposal is in conformance with the Zoning Code.

Site Design

This Permit would allow the construction of an approximately 2,000 square foot, single-story, pastor's residence on a vacant portion of the property at the southwesterly corner of the subject site. The residence would have two covered parking spaces accessed via a driveway to Phelan Avenue. Staff review of the proposed site design for the pastor's residence has concluded that it will present a very typical single-family relationship to the street and that it will be compatible with the existing neighborhood. The primary outdoor living area for this residence would be a deck area that is located in the middle of property, and oriented away from adjoining residences. Staff has concluded that the architecture for the proposed residence is in keeping with existing neighborhood.

As proposed, the residence has been designed to be part of the church campus. Should the church at some point in the future choose to subdivide the site so that the residence is located on a separate parcel, modifications to the church parking layout would be necessary in order to conform with the Zoning Code setback and parking requirements. Staff has placed conditions in the Permit to ensure an appropriate permit process should subdivision be proposed.

A large, movable metal container currently exists along the northerly side of the site. Staff has concluded that this storage container was placed without the benefit of permits and has included a condition in the Permit requiring its removal.

Based on the above analysis, staff has concluded that the proposed site design is appropriate and compatible with the surrounding neighborhood.

RECOMMENDATION

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following findings and conditions in its resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of Medium Low Density Residential (8du/ac) on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The project site is located in the R-1-8 Residence Zoning District. The maximum height for structures in the R-1-8 Residence Zoning District is 35 feet. The minimum setbacks required in the R-1-8 Residence District range from 5 to 25 feet.
3. The Code parking requirements for church parking is one space per four seats. With the addition of the pastor's residence, the project is proposing a total of 93 on-site parking spaces, slightly in excess of the 90 parking spaces required by Code. In addition to paved surface parking areas, on-site lawn areas are currently used to deal with peak parking demand times.
4. This Permit would allow the addition of an approximately 2,000 square foot, single-story pastor's

residence at an existing church facility. The portion of the site proposed for the pastor's residence is currently vacant. The pastor's residence also includes a patio/deck area located at the rear of the proposed residence. The Director of Planning issued a Part 3 Exception Permit (File No. E 72-04-025) to allow the existing church to be established on the subject site. A church use has been in operation since approximately 1975 or earlier, based on Building Permit records.

5. The proposed pastor's residence will be approximately 17 feet in height, and will have a 25-foot front and a 20-foot side (interior) setback. The other proposed setbacks (ie, side and rear) exceed Code requirements for 12 ½ feet (side/corner) and 20 feet (rear) setbacks, respectively. A large, movable metal storage container currently exists along the northerly side of the site. As conditioned, the project developer is required to remove the container from the site prior to obtaining Building Permits for the proposed pastor's residence.
6. The surrounding uses include a school to the east, detached residential to the south, attached residential to the west, and commercial to the north.
7. Under the provisions of Section 15303 (a) of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project conforms to the City's General Plan.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance.
3. The proposed project is in compliance with the California Environmental Quality Act.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

4. The proposed use at the location requested will not
 - a. *Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or*
 - b. *Impair the utility or value of property of other persons located in the vicinity of the site; or*
 - c. *Be detrimental to public health, safety or general welfare; and*
1. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
2. The proposed site is adequately served:

- d. *By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and*
- e. *By other public or private service facilities as are required.*

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Conformance with Plans.** Construction and development shall conform to approved development plans entitled, "Parsonage for Faith Tabernacle – 1775 McLaughlin Avenue" dated April 1, 2001, last revised on, July 20, 2002, on file with the Department of Planning, Building and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 24).
2. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
3. **Prior Permits.** This Permit is to allow the addition of a pastor's residence to an existing church facility only, and does not supercede any prior Permits issued on the subject site.
4. **Outside Storage.** No outside storage is permitted for the project except in areas designated on the approved plan set.

5. **Gates/Emergency Vehicle Access.** All gates shall be accessible at all times to emergency vehicles and personnel, to the satisfaction of the City of San Jose, Fire and Police Chiefs.
6. **Colors and Materials.** All building colors and materials are to be those specified on the approved plan set.
7. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
 - a. *Construction Plans.* This permit file number, CP 01-037 shall be printed on all construction plans submitted to the Building Division.
 - b. *Metal Storage Container along Northerly Property Line.* Prior to the issuance of Building Permits for the proposed pastor's residence, the project developer shall remove the movable metal storage container from the subject site, to the satisfaction of the Director of Planning.
 - c. *Archaeology.* Pursuant to Section 7050.5 of the Health and Safety Code, and Section 5097.94 of the Public Resources Code of the State of California in the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent area remains. The Santa Clara County Coroner shall be notified and shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission who shall attempt to identify descendants of the deceased native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the land owner shall re-inter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.
8. **Fire Hydrants.** Public (off-site) and private (on-site) fire hydrants shall be provided as required. The exact location shall be specified by Protection Engineering Section of the Fire Department to the satisfaction of the Fire Chief.
9. **Fire Hydrants and Driveways.** All fire hydrants shall be at least 10 feet from all driveways to the satisfaction of the Fire Chief.
10. **Fire Flow.** Required fire flow for the site is as approved in writing by the Fire Chief.
11. **Fire Lanes.** Fire lanes, suitably designated "FIRE LANE - NO PARKING," shall be provided to the satisfaction of the Fire Chief.
12. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
13. **Public Works Clearance.** A Development Clearance shall be obtained from the Public Works Department, Room 308, (408) 277-5161, and is subject to the following requirements (3-01616) to the satisfaction of the Director of Public Works:

- a. *Storm Drainage, Sewer Fees.* Storm drainage area fees, sanitary sewer connection fees and sewage treatment plant fees are due, less previous credits.
- b. *Storm.* Revise the Grading Plan to include the following: 1) Indicate the overland release path in arrows. 2) The release path must be paved. 3) On-site ponding must be less than one-foot. 4) Indicate the top of grate elevations and invert elevations of the proposed catch basins. Include the on-site drainage line and location of tie in with the City of San Jose storm sewer main.
- c. *Electrical.* Installation/ relocation/ re-lamping of electroliers will be evaluated at the Improvement Plan Stage.
- d. *Geology.* A Grading Permit is required prior to the issuance of a Public Works Clearance. The construction operation shall control the discharge of pollutants (sediments) to the storm drain system from the site. An erosion control plan may be required with the Grading application. The project site is located within the State of California Seismic Hazard Zone. A soil investigation report addressing the potential hazard of liquefaction must be submitted to, reviewed and approved by the Project Engineer and/or City Geologist prior to the issuance of a Grading Permit or Public Works Clearance.
- e. *Street Improvements.* The project developer shall be responsible to remove and replace curb, gutter and sidewalks damaged during construction of the proposed project. Remove and replace broken or uplifted curb, gutter and sidewalk along project frontages. The repair, overlay, or reconstruction of asphalt pavement may be required. The existing pavement will be evaluated with the street improvement plans and any necessary pavement restoration will be included as part of the Final Street Improvement Plans.
- f. *Landscape.* Install street trees within the public right-of-way along both street frontages per City Standards. The location of street trees will be determined at the Street Improvement Plan stage.
- g. *Reimbursement.* The project developer will be required to reimburse the City for costs advanced for the construction of street improvements along McLaughlin Avenue and Phelan Avenue, in accordance with City Ordinance No. 19663.
- h. *Tully/Senter SNI Area.* The project site is located within the Tully/Senter SNI Area. Public improvements shall conform to the approved Neighborhood Improvement Plan.
- i. *Minor Improvement Permit.* The project developer will be required to satisfy all Public Works conditions prior to the issuance of a Public Works Clearance. The Clearance will require the execution of a Minor Street Improvement Permit that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This Permit shall include plans, insurance, bonds/deposit certificate, and engineering and inspection fees.

14. **Pastor's Residence/Subdivision.** The proposed pastor's residence currently is designed to be an integral part of the overall church campus. The subdivision of the pastor's residence from the church campus shall require separate review and approval, to the satisfaction of the Director of Planning.
15. **Lawn Parking Areas.** The project developer shall maintain the lawn parking areas at all times, including regular mowing and watering, so as not to create a blight problem, to the satisfaction of the Director of Planning.

CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.
 2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
 - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance.
- c: James Wittman, JSW General Contractor, 1798 Barcelona Avenue, San Jose, CA 95124
 Qui Son, Designer, I-Mark Design Group, 1659 Scott Boulevard, Suite 32-A, Santa Clara, CA 95050.

List of Attachments:

Location Map
 DPW Memo
 Fire Memo
 Plan Set